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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/595,846

05/16/2006

Heino Weigand

GK-ZEI-3305/500343.20326

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7590

11/30/2006

REED SMITH, LLP

ATTN: PATENT RECORDS DEPARTMENT
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NEW YORK, NY 10022-7650

EXAMINER

LARYEA, LAWRENCE N

ART UNIT

PAPER NUMBER

3735

DATE MAILED: 11/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/595,846	WEIGAND ET AL.	
	Examiner	Art Unit	
	Lawrence N. Laryea	3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 11-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>16/May/2006</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Specification

1. The disclosure is objected to because the text of the specification is too small, making reading difficult. New application with appropriate size of fonts is required.

Claim Objections

2. Claim 18 is objected to because of the following informalities:

At line 2, "an" should be deleted

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 13 and 18-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 13, line 3 recites the limitation "the short stationary phases." There is insufficient antecedent basis for this limitation in the claim.

6. Claim 18, line 2 it is unclear whether limitation "the movement of the fixation mark an of a diagnostic beam or therapeutic beam" is referring to the same movement of the fixation mark as recited in claim 11 or separate and distinct movement of a fixation mark.

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7. Claim 18, line 2, recites the limitation "the movement of the fixation mark an of a diagnostic beam or therapeutic beam". There is insufficient antecedent basis for this limitation in the claim.

8. Claim 18, line 3, recites the limitation "the same XY mirror". There is insufficient antecedent basis for this limitation in the claim.

9. Claim 19, line 2, recites the limitation "the movement of a diagnostic beam or therapeutic beam". There is insufficient antecedent basis for this limitation in the claim.

10. Claim 19, line 3, recites the limitation "the predetermined movement of the fixation mark." There is insufficient antecedent basis for this limitation in the claim.

11. Claim 20, line 2, recites the limitation "the movement of a diagnostic beam or therapeutic beam". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Sponsel et al (Pub 2004/0046934)** in view of **Eydelman et al (Patent 5206671)**.

14. Re Claims 11-16: **Sponsel et al** disclose a method for displaying a fixation mark for ophthalmologic treatment devices where a measurement, diagnosis or therapy (**See**

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Paragraph [0033] is carried by variably projecting a fixation mark (**See Figures 3-7**) to be displayed in the field of vision of the eye to be treated; allowing the patient to orient the eye to be treated on the fixation mark and moving the fixation mark in the field of vision of the patient, wherein the movement is carried out in such a way that the patient can easily follow the fixation mark. The movement of the fixation mark is carried out continuously or discontinuously, according to a predetermined sequence, or randomly (**See Paragraph [0047], line 9-15**).

15. **Sponsel et al** teaches all of the limitations of the method except that the patient does not orient the eye to be treated on the fixation mark through the foveal fixation.

16. However, **Eydelman et al** disclose that methods are known allowing the patient to orient the eye to be treated on the fixation mark through the foveal fixation (**See Col. 1, line 66-68**).

17. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of **Sponsel et al** by allowing the patient to orient the eye to be treated on the fixation mark through the foveal fixation similar to those methods disclosed by **Eydelman et al** in order to reduce undesired movements of the eye.

18. Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Sponsel et al** and **Eydelman et al**, as applied to claim 11 above, and further in view of **Jernigan (Patent 3984156)**.

19. **Sponsel et al** as modified by **Eydelman et al** disclose a method for displaying a fixation mark for ophthalmologic treatment devices where a measurement, diagnosis or

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therapy is carried by variably projecting a fixation mark to be displayed in the field of vision of the eye to be treated; allowing the patient to orient the eye to be treated on the fixation mark through foveal fixation and moving the fixation mark in the field of vision of the patient, wherein the movement is carried out in such a way that the patient can easily follow the fixation mark. The movement of the fixation mark is carried out continuously or discontinuously, according to a predetermined sequence, or randomly.

20. **Sponsel et al** and **Eydelman et al** fail to disclose that the fixation mark and the movement of diagnostic beam are configured to be controlled or moved by a X-Y mirror unit where the movement of the diagnostic beam is corrected by the movement of the target.

21. However, **Jernigan** disclose a method of displaying a fixation mark (target) in a visual field, where by the movement of the fixation mark and the diagnostic beam are configured to be controlled or moved by a X-Y mirror unit, where the movement of the diagnostic beam is corrected by the movement of the target. (Col.15, line 42-68 and Col.16, line 1-17).

22. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a method for displaying a fixation mark in a field vision similar to that of **Sponsel et al** and **Eydelman et al** where by the fixation mark and fixation mark of beam are configured to be controlled or moved by a X-Y mirror mechanism of, in view of the teachings of **Jernigan** in order to monitor the movements of the eyes and response of the target positions during measuring and evaluating a patient's visual field (See Abstract, line 1-8 of **Jernigan**).

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23. It is inherent for a target to be at a desired location (**online**) during an eye examination so that desired areas would be obtained.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Xie et al (Patent 20030150943) disclose a method where the movement of a diagnostic beam is carried out by an X-Y mirror unit.

McKinnon et al (Patent 6474817) disclose visual tests over the internet (online).

Ames et al (Patent 2238207) disclose an eye test where beams are moved by means of adjustable mirrors.

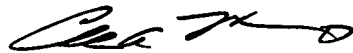
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lawrence N. Laryea whose telephone number is 571-272-9060. The examiner can normally be reached on 8:30 a.m.-5:30 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LNL


Charles A. Marmor, II
SPE, Art Unit 3735